

Senate Engrossed House Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

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CHAPTER 321

HOUSE BILL 2504

AN ACT

AMENDING SECTIONS 42-6202, 42-6203, 42-6204, 42-6205, 42-6206, 42-6208, 42-6209 AND 42-6210, ARIZONA REVISED STATUTES; RELATING TO GOVERNMENT PROPERTY LEASE EXCISE TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 42-6202, Arizona Revised Statutes, is amended to
3 read:

4 42-6202. Commercial government property lease excise tax

5 A. A government lessor shall levy and THE COUNTY TREASURER SHALL
6 collect an annual excise tax on each prime lessee for the use or occupancy of
7 the EACH government lessor's government property improvement.

8 B. A government lessor may not own or operate a government property
9 improvement unless one of the following applies:

10 1. ~~The government lessor levies and collects a commercial~~ THE
11 IMPROVEMENT IS SUBJECT TO THE government property lease excise tax under this
12 article with respect to the improvement.

13 2. The improvement is exempt from tax under section 42-6208.

14 3. Tax on the improvement has been abated under section 42-6209.

15 C. WITHIN THIRTY DAYS AFTER ENTERING INTO A LEASE FOR THE OCCUPANCY OF
16 A GOVERNMENT PROPERTY IMPROVEMENT, THE GOVERNMENT LESSOR SHALL:

17 1. RECORD A MEMORANDUM OF LEASE IN THE OFFICE OF THE COUNTY RECORDER
18 IN THE COUNTY IN WHICH THE GOVERNMENT PROPERTY IMPROVEMENT IS LOCATED. THE
19 MEMORANDUM OF LEASE MUST INCLUDE THE BASIC LEASE TERMS, INCLUDING THE NAMES
20 OF THE PARTIES, THE LEASED PROPERTY, THE LEASE TERM, INCLUDING THE BEGINNING
21 AND ENDING DATES, AND ANY OPTIONS TO RENEW THE LEASE OR TO PURCHASE ANY OF
22 THE GOVERNMENT PROPERTY IMPROVEMENT OR GOVERNMENT OWNED LAND.

23 2. SUBMIT TO THE COUNTY TREASURER AND THE DEPARTMENT OF REVENUE COPIES
24 OF THE LEASE OR AN ABSTRACT OF THE LEASE.

25 D. THE DEPARTMENT OF REVENUE SHALL MAINTAIN A PUBLIC DATABASE BY
26 COUNTY, CITY AND TOWN OF ALL GOVERNMENT PROPERTY LEASES THAT ARE SUBJECT TO
27 THE TAX UNDER THIS ARTICLE.

28 E. IF A COUNTY ASSESSOR BECOMES AWARE OF A GOVERNMENT PROPERTY
29 IMPROVEMENT THAT IS OR SHOULD BE SUBJECT TO THE TAX UNDER THIS ARTICLE, THE
30 ASSESSOR SHALL NOTIFY THE COUNTY TREASURER AND THE DEPARTMENT OF REVENUE FOR
31 CONFIRMATION THAT THE IMPROVEMENT IS INCLUDED IN THEIR DATABASES.

32 Sec. 2. Section 42-6203, Arizona Revised Statutes, is amended to read:

33 42-6203. Rates of tax

34 A. Except as otherwise provided in this section, IF A LEASE OF A
35 GOVERNMENT PROPERTY IMPROVEMENT WAS ENTERED INTO BEFORE JUNE 1, 2010, OR IF A
36 DEVELOPMENT AGREEMENT, ORDINANCE OR RESOLUTION WAS APPROVED BY THE GOVERNING
37 BODY OF THE GOVERNMENT LESSOR BEFORE JUNE 1, 2010 THAT AUTHORIZED A LEASE ON
38 THE OCCURRENCE OF SPECIFIED CONDITIONS AND THE LEASE WAS ENTERED INTO WITHIN
39 TEN YEARS AFTER THE DATE THE DEVELOPMENT AGREEMENT WAS ENTERED INTO OR THE
40 ORDINANCE OR RESOLUTION WAS APPROVED BY THE GOVERNING BODY:

41 1. The tax authorized by this article shall be levied and collected at
42 the following rates:

43 1. (a) One dollar per square foot of gross building space for office
44 buildings with one floor above ground.

- 1 ~~2-~~ (b) One dollar twenty-five cents per square foot of gross building
2 space for office buildings with more than one but fewer than eight floors
3 above ground.
- 4 ~~3-~~ (c) One dollar seventy-five cents per square foot of gross
5 building space for office buildings with eight floors or more above ground.
- 6 ~~4-~~ (d) One dollar fifty cents per square foot of retail building
7 space, including space that is devoted to the sale of tangible personal
8 property, restaurants, health clubs, hair salons, dry cleaners, travel
9 agencies and other retail services.
- 10 ~~5-~~ (e) One dollar fifty cents per square foot of hotel or motel
11 building space.
- 12 ~~6-~~ (f) Seventy-five cents per square foot of warehouse or industrial
13 building space.
- 14 ~~7-~~ (g) Fifty cents per square foot of residential rental building
15 space.
- 16 ~~8-~~ (h) One hundred dollars per parking space located in a parking
17 garage or deck.
- 18 ~~9-~~ (i) One dollar per square foot of all other government property
19 improvements not included in ~~paragraphs 1 through 8~~ SUBDIVISIONS (a) THROUGH
20 (h) of this ~~subsection~~ PARAGRAPH.
- 21 ~~B-~~ 2. The tax rate for government property improvements for which the
22 original certificate of occupancy was issued:
- 23 ~~1-~~ (a) At least ten years but less than twenty years before the date
24 the tax is due is eighty per cent of the rate provided in ~~subsection A~~
25 PARAGRAPH 1 of this ~~section~~ SUBSECTION.
- 26 ~~2-~~ (b) At least twenty years but less than thirty years before the
27 date the tax is due is sixty per cent of the rate provided in ~~subsection A~~
28 PARAGRAPH 1 of this ~~section~~ SUBSECTION.
- 29 ~~3-~~ (c) At least thirty but less than forty years before the date the
30 tax is due is forty per cent of the rate provided in ~~subsection A~~ PARAGRAPH 1
31 of this ~~section~~ SUBSECTION.
- 32 ~~4-~~ (d) At least forty but less than fifty years before the date the
33 tax is due is twenty per cent of the rate provided in ~~subsection A~~ PARAGRAPH
34 1 of this ~~section~~ SUBSECTION.
- 35 ~~5-~~ (e) Fifty or more years before the date the tax is due is zero.
- 36 ~~6-~~ 3. If no certificate of occupancy can be located, dated aerial
37 photographs or other evidence of substantial completion may be used to
38 determine the age of the building for purposes of ~~subsection B~~ PARAGRAPH 2 of
39 this ~~section~~ SUBSECTION.
- 40 4. A LEASE OR DEVELOPMENT AGREEMENT, ORIGINALLY SUBJECT TO THIS
41 SUBSECTION, THAT IS SUBSEQUENTLY AMENDED REMAINS SUBJECT TO THIS SUBSECTION
42 IF THE AMENDED LEASE OR DEVELOPMENT AGREEMENT MEETS ALL OF THE FOLLOWING
43 REQUIREMENTS:
- 44 (a) THE GOVERNMENT LESSOR DETERMINES THAT THE AMENDMENT FURTHERS THE
45 ORIGINAL PURPOSE OF THE LEASE OR DEVELOPMENT AGREEMENT.

1 (b) ANY LAND ADDED UNDER THE AMENDMENT IS CONTIGUOUS TO THE LAND UNDER
2 THE ORIGINAL LEASE OR DEVELOPMENT AGREEMENT AND DOES NOT INCREASE THE LAND
3 AREA UNDER THE ORIGINAL LEASE OR DEVELOPMENT AGREEMENT BY MORE THAN FIFTY PER
4 CENT.

5 (c) ANY GOVERNMENT PROPERTY IMPROVEMENT ADDED UNDER THE AMENDMENT DOES
6 NOT INCREASE THE AREA OF GROSS BUILDING SPACE OF GOVERNMENT PROPERTY
7 IMPROVEMENTS UNDER THE ORIGINAL LEASE OR DEVELOPMENT AGREEMENT BY MORE THAN
8 ONE HUNDRED PER CENT.

9 B. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IF A LEASE OF A
10 GOVERNMENT PROPERTY IMPROVEMENT DOES NOT MEET THE CONDITIONS FOR APPLYING
11 SUBSECTION A OF THIS SECTION:

12 1. SUBJECT TO PARAGRAPHS 2 AND 3 OF THIS SUBSECTION, THE TAX
13 AUTHORIZED BY THIS ARTICLE SHALL BE LEVIED AND COLLECTED AT THE FOLLOWING
14 BASE RATES, WHICH APPLY THROUGH DECEMBER 31, 2011:

15 (a) TWO DOLLARS PER SQUARE FOOT OF GROSS BUILDING SPACE FOR OFFICE
16 BUILDINGS WITH ONE FLOOR ABOVE GROUND.

17 (b) TWO DOLLARS THIRTY CENTS PER SQUARE FOOT OF GROSS BUILDING SPACE
18 FOR OFFICE BUILDINGS WITH MORE THAN ONE BUT FEWER THAN EIGHT FLOORS ABOVE
19 GROUND.

20 (c) THREE DOLLARS TEN CENTS PER SQUARE FOOT OF GROSS BUILDING SPACE
21 FOR OFFICE BUILDINGS WITH EIGHT FLOORS OR MORE ABOVE GROUND.

22 (d) TWO DOLLARS FIFTY-ONE CENTS PER SQUARE FOOT OF RETAIL BUILDING
23 SPACE, INCLUDING SPACE THAT IS DEVOTED TO THE SALE OF TANGIBLE PERSONAL
24 PROPERTY, RESTAURANTS, HEALTH CLUBS, HAIR SALONS, DRY CLEANERS, TRAVEL
25 AGENCIES AND OTHER RETAIL SERVICES.

26 (e) TWO DOLLARS PER SQUARE FOOT OF HOTEL OR MOTEL BUILDING SPACE.

27 (f) ONE DOLLAR THIRTY-FIVE CENTS PER SQUARE FOOT OF WAREHOUSE OR
28 INDUSTRIAL BUILDING SPACE.

29 (g) SEVENTY-SIX CENTS PER SQUARE FOOT OF RESIDENTIAL RENTAL BUILDING
30 SPACE.

31 (h) TWO HUNDRED DOLLARS PER PARKING SPACE LOCATED IN A PARKING GARAGE
32 OR DECK.

33 (i) TWO DOLLARS PER SQUARE FOOT OF ALL OTHER GOVERNMENT PROPERTY
34 IMPROVEMENTS NOT INCLUDED IN SUBDIVISIONS (a) THROUGH (h) OF THIS PARAGRAPH.

35 2. IF, IN THE TAX YEAR IN WHICH THE LEASE OF THE GOVERNMENT PROPERTY
36 IMPROVEMENT IS ENTERED INTO, THE AGGREGATE OF ALL AD VALOREM PROPERTY TAX
37 RATES OF ALL TAXING JURISDICTIONS IN WHICH THE GOVERNMENT PROPERTY
38 IMPROVEMENT IS LOCATED IS WITHIN NINETY PER CENT AND ONE HUNDRED TEN PER CENT
39 OF THE COUNTY-WIDE AVERAGE COMBINED PROPERTY TAX RATES, THE RATE OF TAX
40 PRESCRIBED BY PARAGRAPH 1 OF THIS SUBSECTION, AS CURRENTLY ADJUSTED PURSUANT
41 TO PARAGRAPH 3 OF THIS SUBSECTION, APPLIES WITH RESPECT TO THAT GOVERNMENT
42 PROPERTY IMPROVEMENT. IF, IN THE TAX YEAR IN WHICH THE LEASE OF THE
43 GOVERNMENT PROPERTY IMPROVEMENT IS ENTERED INTO, THE AGGREGATE OF ALL AD
44 VALOREM PROPERTY TAX RATES OF ALL TAXING JURISDICTIONS IN WHICH THE
45 GOVERNMENT PROPERTY IMPROVEMENT IS LOCATED IS LESS THAN NINETY PER CENT OF

1 THE COUNTY-WIDE AVERAGE COMBINED PROPERTY TAX RATES, THE RATE OF TAX
2 PRESCRIBED BY PARAGRAPH 1 OF THIS SUBSECTION, AS CURRENTLY ADJUSTED PURSUANT
3 TO PARAGRAPH 3 OF THIS SUBSECTION, SHALL BE REDUCED BY TEN PER CENT.

4 3. ON OR BEFORE DECEMBER 1, 2011 AND DECEMBER 1 OF EACH YEAR
5 THEREAFTER, FOR ALL GOVERNMENT PROPERTY LEASES THAT ARE SUBJECT TO THIS
6 SUBSECTION THE DEPARTMENT OF REVENUE SHALL ADJUST THE TAX RATES THAT APPLY
7 UNDER PARAGRAPHS 1 AND 2 OF THIS SUBSECTION IN THE FOLLOWING CALENDAR YEAR
8 FOR EACH PROPERTY USE ACCORDING TO THE AVERAGE ANNUAL POSITIVE OR NEGATIVE
9 PERCENTAGE CHANGE FOR THE TWO MOST RECENT FISCAL YEARS IN THE PRODUCER PRICE
10 INDEX FOR NEW CONSTRUCTION OR ITS SUCCESSOR INDEX PUBLISHED BY THE UNITED
11 STATES BUREAU OF LABOR STATISTICS. ON OR BEFORE DECEMBER 15 OF EACH YEAR,
12 THE DEPARTMENT SHALL POST THE ADJUSTED RATES FOR THE FOLLOWING CALENDAR YEAR
13 ON ITS OFFICIAL WEBSITE AND TRANSMIT THE ADJUSTED RATES TO EACH COUNTY
14 TREASURER.

15 ~~D.~~ C. The tax rate for a government property improvement that was
16 constructed pursuant to a lease or development agreement entered into from
17 and after June 30, 1996 and that is located outside a slum or blighted area
18 established pursuant to title 36, chapter 12, article 3 is one and one-half
19 times the rate established by subsections A and B of this section.

20 ~~E.~~ D. Within the first twenty years after the issuance of the
21 original certificate of occupancy, the tax rate on the use or occupancy of a
22 government property improvement is twenty per cent of the rate established in
23 subsections A and B of this section for any of the following:

24 1. Government property improvements that are subject to leases or
25 agreements that were entered into before April 1, 1985, and options and
26 rights contained in the leases or agreements.

27 2. Government property improvements that are subject to leases entered
28 into based on a redevelopment contract, as defined in section 36-1471,
29 entered into before April 1, 1985.

30 3. Government property improvements that are subject to leases entered
31 into based on an agreement for a redevelopment project for which federal
32 grant monies have been received and that was entered into before April 1,
33 1985.

34 4. Government property improvements that are located at an airport
35 that was owned on or before January 1, 1988 by a county having a population
36 of four hundred thousand persons or less or by a city or town that is located
37 in a county having a population of four hundred thousand persons or less if
38 the property is used primarily for manufacturing, retail, distribution,
39 research or commercial purposes. ~~IN~~ FOR THE PURPOSES OF this paragraph,
40 "commercial" includes facilities for office, recreational, hotel, motel and
41 service uses.

42 ~~F.~~ E. Within the first ten years after the issuance of the
43 certificate of occupancy, the tax rate on the use or occupancy of a
44 government property improvement that is located in a slum or blighted area
45 established pursuant to title 36, chapter 12, article 3, THAT resulted or

1 will result in an increase in property value of at least one hundred per cent
2 and THAT is not eligible for abatement pursuant to section 42-6209 is eighty
3 per cent of the rate established in subsections A and B of this section.

4 ~~G.~~ F. The tax rate to be applied under subsection A OR B of this
5 section shall be determined by the predominant use to which the government
6 property improvement is devoted, except that in all cases the tax rate
7 prescribed by subsection A, paragraph ~~8~~ 1, SUBDIVISION (h) OR SUBSECTION B,
8 PARAGRAPH 1, SUBDIVISION (h) of this section shall be applied to any parking
9 garage or deck. If there is no single predominant use, the tax shall be
10 determined by applying the appropriate tax rate to the building space devoted
11 to each use identified in that subsection. For the purposes of this
12 subsection, IN APPLYING THE TAX RATES UNDER SUBSECTION A OF THIS SECTION the
13 functional area of a government property improvement does not include
14 subsidiary, auxiliary or servient areas such as lobbies, stairwells,
15 mechanical rooms and meeting and banquet rooms. For THE purposes of this
16 subsection, "predominant use" means the use to which eighty-five per cent or
17 more of the functional area of a government property improvement is devoted.

18 H. G. Prime lessees of government property improvements who become
19 taxable or whose taxable status terminates during the calendar year in which
20 the taxes are due, including prime lessees subject to exemption or abatement
21 under sections 42-6208 and 42-6209, shall pay tax for that calendar year on a
22 pro rata basis.

23 Sec. 3. Section 42-6204, Arizona Revised Statutes, is amended to read:

24 42-6204. Payment; return; interest; penalty

25 A. The taxes that are levied pursuant to this article are:

26 1. Due and payable TO THE COUNTY TREASURER annually on or before
27 December 1.

28 2. Delinquent if not paid on or before that date.

29 B. The prime lessee, if subject to the tax or qualified for an
30 abatement under this article, shall submit a return to the ~~government-lessor~~
31 COUNTY TREASURER on a RETURN form prescribed by the ~~government-lessor~~
32 DEPARTMENT OF REVENUE AND SUBMIT A COPY OF THE RETURN TO THE GOVERNMENT
33 LESSOR. If the prime lessee is exempt from the tax pursuant to section
34 42-6208, the prime lessee shall keep and maintain the information required in
35 this subsection. The return form shall be made available by the ~~government~~
36 ~~lessor~~ COUNTY TREASURER at least sixty days before the taxes are due and
37 payable and shall include:

38 1. The name and address of the prime lessee.

39 2. The location of the government property improvement.

40 3. The amount of gross building space or number of parking garage or
41 deck spaces. The prime lessee may submit an initial statement of gross
42 building space that is certified by a person who is professionally
43 credentialed in this state as an architect, general contractor, surveyor or
44 appraiser and thereafter shall file an annual statement with the return,

1 under penalty of perjury, that the gross building space is unchanged from the
2 amount previously certified.

3 4. The date of the original certificate of occupancy.

4 5. The use or uses of the property.

5 6. If an abatement under section 42-6209 applies, a certification
6 under penalty of perjury that all elements necessary to qualify for the
7 abatement are satisfied for the year covered by the return.

8 7. Any other pertinent information that ~~the government lessor may~~
9 require IS REQUIRED BY THE RETURN FORM.

10 C. If any part of the tax is not paid before it becomes delinquent,
11 interest accrues on the unpaid amount at the rate and in the manner
12 prescribed by section 42-1123 until it is paid. Interest on overpayments
13 accrues at the rate and in the manner prescribed by section 42-1123 until the
14 refund is paid BY THE COUNTY TREASURER.

15 D. The ~~government lessor~~ COUNTY TREASURER shall assess and collect a
16 penalty of five per cent of any part of the tax that is not paid before it
17 becomes delinquent.

18 E. The ~~government lessor~~ COUNTY TREASURER shall issue a receipt to the
19 prime lessee for payments under this article.

20 F. ON OR BEFORE FEBRUARY 15 OF EACH YEAR, THE COUNTY TREASURER SHALL
21 SUBMIT A REPORT TO:

22 1. THE DEPARTMENT OF REVENUE OF ALL RETURNS AND PAYMENTS RECEIVED FOR
23 THE PRECEDING CALENDAR YEAR UNDER THIS SECTION. THE REPORT SHALL BE IN A
24 FORM AND CONTAIN DATA PRESCRIBED BY THE DEPARTMENT OF REVENUE.

25 2. EACH GOVERNMENT LESSOR OF ALL RETURNS AND PAYMENTS RECEIVED FOR THE
26 PRECEDING CALENDAR YEAR WITH RESPECT TO LEASES OF GOVERNMENT PROPERTY
27 IMPROVEMENTS OWNED BY THE GOVERNMENT LESSOR. THESE REPORTS SHALL CONTAIN THE
28 SAME DATA PRESCRIBED PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION.

29 ~~F.~~ G. The ~~government lessor shall be~~ COUNTY TREASURER IS entitled to
30 rely upon any information contained in any abatement certification described
31 in subsection B, paragraph 6 of this section unless the ~~government lessor~~
32 COUNTY TREASURER has actual knowledge that the certification is inaccurate.

33 Sec. 4. Section 42-6205, Arizona Revised Statutes, is amended to read:
34 42-6205. Disposition of revenue

35 A. The ~~government lessor~~ COUNTY TREASURER shall separately account for
36 payments received under this article with respect to each government property
37 improvement.

38 B. Within thirty days after receiving tax revenues under this article,
39 the ~~government lessor~~ COUNTY TREASURER shall pay to the following taxing
40 jurisdictions in which the government property improvement is located the
41 monies received with respect to the improvement, allocating the revenue among
42 the jurisdictions as follows:

43 1. The county, for deposit in its general fund, thirteen per cent.

44 2. The city or town, seven per cent. If the government property
45 improvement is located in an unincorporated area, the revenue that would

1 otherwise be allocated to a city or town shall be allocated to the other
2 jurisdictions identified in this section in the same proportion that the
3 remaining revenues are allocated to them.

4 3. The community college district, seven per cent. If the government
5 property improvement is not located in a community college district, the
6 revenue that would otherwise be allocated to the district shall be allocated
7 to the other jurisdictions identified in this section in the same proportion
8 that the remaining revenues are allocated to them.

9 4. The common school district, thirty-six and one-half per cent, the
10 high school district, thirty-six and one-half per cent, the common school
11 district not within a high school district, seventy-three per cent, or the
12 unified school district, seventy-three per cent. If the government property
13 improvement is not located in any school district, the revenue that would
14 otherwise be allocated under this paragraph shall be allocated to the other
15 jurisdictions identified in this section in the same proportion that the
16 remaining revenues are allocated to them.

17 C. THE COUNTY TREASURER SHALL DISTRIBUTE ALL MONIES COLLECTED OR
18 RECEIVED UNDER THIS ARTICLE AS DELINQUENT OR BACK TAXES IN THE SAME MANNER
19 AND PROPORTIONS AS REQUIRED BY SUBSECTION B, EXCEPT THAT THE COUNTY TREASURER
20 SHALL CREDIT TO THE COUNTY GENERAL FUND ANY INTEREST AND PENALTIES COLLECTED
21 UNDER THIS ARTICLE WITH RESPECT TO DELINQUENT TAXES.

22 Sec. 5. Section 42-6206, Arizona Revised Statutes, is amended to read:
23 42-6206. Leases and development agreements; acknowledgment of
24 tax liability; approval requirements; default

25 A. Each lease or development agreement between a prime lessee and a
26 government lessor entered into after June 30, 1996 shall include:

27 1. A notice of the tax liability under this article.

28 2. A provision that failure by the prime lessee to pay the tax after
29 notice and an opportunity to cure is an event of default that could result in
30 divesting the prime lessee of any interest in or right of occupancy of the
31 government property improvement.

32 B. EXCEPT AS PROVIDED BY SUBSECTION C OF THIS SECTION, EACH LEASE OR
33 DEVELOPMENT AGREEMENT BETWEEN A PRIME LESSEE AND A GOVERNMENT LESSOR FOR A
34 GOVERNMENT PROPERTY IMPROVEMENT LOCATED IN A SLUM OR BLIGHTED AREA THAT IS
35 ESTABLISHED PURSUANT TO TITLE 36, CHAPTER 12, ARTICLE 3, THAT IS ENTERED INTO
36 FROM AND AFTER MAY 31, 2010 AND THAT DOES NOT MEET THE CONDITIONS PROVIDED IN
37 SECTION 42-6203, SUBSECTION A:

38 (a) SHALL NOT BE APPROVED UNLESS THE GOVERNMENT LESSOR:

39 (i) NOTIFIES THE GOVERNING BODIES OF THE COUNTY AND ANY CITY, TOWN AND
40 SCHOOL DISTRICT IN WHICH THE GOVERNMENT PROPERTY IMPROVEMENT IS LOCATED AT
41 LEAST SIXTY DAYS BEFORE THE APPROVAL. THE NOTICE MUST INCLUDE THE NAME AND
42 ADDRESS OF THE INTENDED PRIME LESSEE, THE LOCATION AND PROPOSED USE OF THE
43 GOVERNMENT PROPERTY IMPROVEMENT AND THE PROPOSED TERM OF THE LEASE OR
44 DEVELOPMENT AGREEMENT.

(ii) DETERMINES THAT, WITHIN THE TERM OF THE LEASE OR DEVELOPMENT AGREEMENT, THE ECONOMIC AND FISCAL BENEFIT TO THIS STATE AND THE COUNTY, CITY OR TOWN IN WHICH THE GOVERNMENT PROPERTY IMPROVEMENT IS LOCATED WILL EXCEED THE BENEFITS RECEIVED BY THE PRIME LESSEE AS A RESULT OF THE DEVELOPMENT AGREEMENT OR LEASE ON THE BASIS OF AN ESTIMATE OF THOSE BENEFITS PREPARED BY AN INDEPENDENT THIRD PARTY IN A MANNER AND METHOD ACCEPTABLE TO THE GOVERNING BODY OF THE GOVERNMENT LESSOR. THE ESTIMATE MUST BE PROVIDED TO THE GOVERNMENT LESSOR AND THE GOVERNING BODIES OF THE COUNTY AND ANY CITY, TOWN AND SCHOOL DISTRICT IN WHICH THE GOVERNMENT PROPERTY IMPROVEMENT IS LOCATED AT LEAST THIRTY DAYS BEFORE THE VOTE OF THE GOVERNING BODY. A LEASE OR DEVELOPMENT AGREEMENT BETWEEN A PRIME LESSEE AND A GOVERNMENT LESSOR INVOLVING RESIDENTIAL RENTAL HOUSING IS EXEMPT FROM THE ECONOMIC ESTIMATE ANALYSIS REQUIREMENTS OF THIS ITEM.

(b) MUST BE APPROVED BY A SIMPLE MAJORITY VOTE OF THE GOVERNING BODY WITHOUT THE USE OF A CONSENT CALENDAR.

C. A LEASE OR DEVELOPMENT AGREEMENT THAT IS SUBJECT TO SUBSECTION B OF THIS SECTION MUST PROVIDE THAT THE LEASE BEGINS WITHIN TEN YEARS AFTER APPROVAL OF THE DEVELOPMENT AGREEMENT AND THE TERM OF THE LEASE DOES NOT EXCEED TWENTY-FIVE YEARS, INCLUDING ANY ABATEMENT PERIOD AUTHORIZED UNDER SECTION 42-6209, AND REGARDLESS OF WHETHER THE LEASE IS TRANSFERRED OR CONVEYED TO SUBSEQUENT PRIME LESSEES DURING THAT PERIOD. AS SOON AS REASONABLY PRACTICABLE BUT WITHIN TWELVE MONTHS AFTER THE EXPIRATION DATE OF THE LEASE THE GOVERNMENT LESSOR MUST CONVEY TO THE CURRENT PRIME LESSEE TITLE TO THE GOVERNMENT PROPERTY IMPROVEMENT AND UNDERLYING LAND. PROPERTY CONVEYED TO THE PRIME LESSEE UNDER THIS SUBDIVISION DOES NOT QUALIFY FOR CLASSIFICATION AS CLASS SIX PROPERTY OR FOR ANY OTHER DISCOUNTED ASSESSMENT REGARDLESS OF THE LOCATION OR CONDITION OF THE PROPERTY.

D. SUBSECTIONS B AND C OF THIS SECTION DO NOT APPLY IF THE GOVERNMENT LESSOR IS ACTING AS A COMMERCIAL LANDLORD WITHOUT A DEVELOPMENT AGREEMENT IN A LEASE FOR A USE ANCILLARY TO A GOVERNMENT PROPERTY IMPROVEMENT USED FOR A PUBLIC PURPOSE.

~~B.~~ E. No later than June 30 of each year the government lessor shall provide the county assessor with a complete list of development agreements between the government lessor and the prime lessees, including the commencement and termination dates of the agreements, the names and addresses of the prime lessees and the locations of the properties that are subject to the agreements.

Sec. 6. Section 42-6208, Arizona Revised Statutes, is amended to read:
42-6208. Exempt government property improvements

The tax under this article does, SECTION 42-6206, SUBSECTION B AND SECTION 42-6209, SUBSECTION C DO not apply with respect to:

1. Property that is used for a governmental activity.
2. Property that is used for public housing.
3. Easements and rights-of-way of railroads and gas, electric, water, pipeline and telephone utilities.

1 4. Interests in all or any part of a facility that is owned of record
2 by a government lessor and used primarily for athletic, recreational,
3 entertainment, artistic, cultural or convention activities if the interest is
4 used for those activities or activities directly related and incidental to
5 these uses including concession stands.

6 5. Property that is ~~located on municipal airports and airports that~~
7 ~~operate pursuant to sections 28-8423, 28-8424 and 28-8425, if the property is~~
8 used for or in connection with aviation, including hangars, tie-downs,
9 aircraft maintenance, sale of aviation related items, charter and rental
10 activities, commercial aircraft terminal franchises, RENTAL CAR OPERATIONS,
11 parking facilities and restaurants, stores and other services that are
12 located in a terminal.

13 6. The use by a commercial airline of the runways and terminal
14 facilities of state, city, town or county airports and public airports
15 operating pursuant to sections 28-8423, 28-8424 and 28-8425.

16 7. Leases of property or interests in a transportation facility that
17 is constructed or operated pursuant to title 28, chapter 22.

18 8. INTERESTS IN LANDS HELD IN TRUST BY THIS STATE PURSUANT TO TITLE
19 37, CHAPTER 2, ARTICLE 1.

20 ~~8-~~ 9. Interests in property held in trust for an Indian or an Indian
21 tribe by the United States government.

22 ~~9-~~ 10. Interests in property that is defined as "contractor-acquired
23 property" or "government-furnished property" in the federal acquisition
24 regulations, 48 Code of Federal Regulations section 45.101, and that is owned
25 by the government and used to perform a government contract.

26 ~~10-~~ 11. Property of a corporation that is organized by or at the
27 direction of a county, city or town to develop, construct, improve, repair,
28 replace or own any property, improvement, building or other facility to be
29 used for public purposes that the county, city or town pledges to lease or
30 lease-purchase with county or municipal special or general revenues.

31 ~~11-~~ 12. Interests in property used by a chamber of commerce recognized
32 under section 501(c)(6) of the United States internal revenue code if the
33 property is used predominately for those federal tax exempt purposes.

34 ~~12-~~ 13. Interests in property used by organizations that are exempt
35 from taxation under section 501(c)(3) of the internal revenue code.

36 ~~13-~~ 14. Interests in parking garages or decks if the parking garages
37 or decks are owned and operated by a government lessor or operated on behalf
38 of a government lessor, by an entity other than the prime lessee, pursuant to
39 a management agreement with the government lessor.

40 ~~14-~~ 15. Residential rentals if the prime lessee is the occupant.

41 Sec. 7. Section 42-6209, Arizona Revised Statutes, is amended to read:

42 42-6209. Abatement of tax for government property improvements
43 in single central business district

44 A. A ~~government lessor shall~~ CITY OR TOWN MAY abate the tax provided
45 for under this article for a limited period beginning when the certificate of

1 occupancy is issued and ending eight years after the certificate of occupancy
2 is issued on a government property improvement that is constructed either
3 before or after July 20, 1996 and that meets the following requirements:

4 1. The improvement is located in a single central business district in
5 ~~a slum or blighted area that is established pursuant to title 36, chapter 12,~~
6 ~~article 3~~ THE CITY OR TOWN and is subject to a lease or development agreement
7 entered into on or after April 1, 1985. FOR THE PURPOSES OF THIS SECTION:

8 (a) A CITY OR TOWN SHALL NOT DESIGNATE MORE THAN ONE CENTRAL BUSINESS
9 DISTRICT WITHIN ITS CORPORATE BOUNDARIES.

10 (b) A CITY OR TOWN SHALL NOT APPROVE OR ENTER INTO A DEVELOPMENT
11 AGREEMENT OR LEASE FOR A GOVERNMENT PROPERTY IMPROVEMENT WITHIN ONE YEAR
12 AFTER THE DESIGNATION OF THE CENTRAL BUSINESS DISTRICT IN WHICH THE
13 IMPROVEMENT IS LOCATED.

14 (c) "CENTRAL BUSINESS DISTRICT" MEANS A SINGLE AND CONTIGUOUS
15 GEOGRAPHICAL AREA DESIGNATED BY RESOLUTION OF THE GOVERNING BODY OF THE CITY
16 OR TOWN AND MEETING THE FOLLOWING REQUIREMENTS:

17 (i) THE CENTRAL BUSINESS DISTRICT IS LOCATED ENTIRELY WITHIN A SLUM OR
18 BLIGHTED AREA THAT IS ESTABLISHED PURSUANT TO TITLE 36, CHAPTER 12,
19 ARTICLE 3.

20 (ii) THE CENTRAL BUSINESS DISTRICT IS GEOGRAPHICALLY COMPACT AND NO
21 LARGER THAN THE GREATER OF FIVE PER CENT OF THE TOTAL LAND AREA WITHIN THE
22 EXTERIOR BOUNDARIES OF THE CITY OR TOWN OR SIX HUNDRED FORTY ACRES.

23 2. The government property improvement resulted or will result in an
24 increase in property value of at least one hundred per cent.

25 B. ~~Unless waived by the government lessor,~~ The prime lessee shall
26 NOTIFY THE COUNTY TREASURER AND THE GOVERNMENT LESSOR AND apply for the
27 abatement before the taxes under this article are due and payable in the
28 first year after the certificate of occupancy is issued. ~~The prime lessee~~
29 ~~shall notify the government lessor if the government property improvement no~~
30 ~~longer qualifies for abatement under this section.~~

31 C. EXCEPT AS PROVIDED BY SUBSECTION D, EACH LEASE BETWEEN A PRIME
32 LESSEE AND A GOVERNMENT LESSOR FOR WHICH THE TAX IS ABATED UNDER THIS SECTION
33 AND THAT IS ENTERED INTO FROM AND AFTER MAY 31, 2010, AND THAT DOES NOT MEET
34 THE CONDITIONS PROVIDED IN SECTION 42-6203, SUBSECTION A, MUST BE APPROVED BY
35 A SIMPLE MAJORITY VOTE OF THE GOVERNING BODY WITHOUT THE USE OF A CONSENT
36 CALENDAR AND SHALL NOT BE APPROVED UNLESS:

37 1. THE GOVERNMENT LESSOR NOTIFIES THE GOVERNING BODIES OF THE COUNTY
38 AND ANY CITY, TOWN AND SCHOOL DISTRICT IN WHICH THE GOVERNMENT PROPERTY
39 IMPROVEMENT IS LOCATED AT LEAST SIXTY DAYS BEFORE THE APPROVAL. THE NOTICE
40 MUST INCLUDE THE NAME AND ADDRESS OF THE INTENDED PRIME LESSEE, THE LOCATION
41 AND PROPOSED USE OF THE GOVERNMENT PROPERTY IMPROVEMENT AND THE PROPOSED TERM
42 OF THE LEASE OR DEVELOPMENT AGREEMENT.

43 2. THE GOVERNMENT LESSOR DETERMINES THAT, WITHIN THE TERM OF THE LEASE
44 OR DEVELOPMENT AGREEMENT, THE ECONOMIC AND FISCAL BENEFIT TO THIS STATE AND
45 THE COUNTY, CITY OR TOWN IN WHICH THE GOVERNMENT PROPERTY IMPROVEMENT IS

1 LOCATED WILL EXCEED THE BENEFITS RECEIVED BY THE PRIME LESSEE AS A RESULT OF
2 THE DEVELOPMENT AGREEMENT OR LEASE ON THE BASIS OF AN ESTIMATE OF THOSE
3 BENEFITS PREPARED BY AN INDEPENDENT THIRD PARTY IN A MANNER AND METHOD
4 ACCEPTABLE TO THE GOVERNING BODY OF THE GOVERNMENT LESSOR. THE ESTIMATE MUST
5 BE PROVIDED TO THE GOVERNMENT LESSOR AND THE GOVERNING BODIES OF THE COUNTY
6 AND ANY CITY, TOWN AND SCHOOL DISTRICT IN WHICH THE GOVERNMENT PROPERTY
7 IMPROVEMENT IS LOCATED AT LEAST THIRTY DAYS BEFORE THE VOTE OF THE GOVERNING
8 BODY. A LEASE OR DEVELOPMENT AGREEMENT BETWEEN A PRIME LESSEE AND A
9 GOVERNMENT LESSOR INVOLVING RESIDENTIAL RENTAL HOUSING IS EXEMPT FROM THE
10 ECONOMIC ESTIMATE ANALYSIS REQUIREMENTS OF THIS PARAGRAPH.

11 3. THE LEASE OR DEVELOPMENT AGREEMENT PROVIDES THAT THE GOVERNMENT
12 LESSOR MAY NOT APPROVE AN AMENDMENT TO CHANGE THE USE OF THE GOVERNMENT
13 PROPERTY IMPROVEMENT DURING THE PERIOD OF ABATEMENT UNLESS:

14 (a) THE GOVERNMENT LESSOR NOTIFIES THE GOVERNING BODIES OF THE COUNTY
15 AND ANY CITY, TOWN AND SCHOOL DISTRICT IN WHICH THE GOVERNMENT PROPERTY
16 IMPROVEMENT IS LOCATED AT LEAST SIXTY DAYS BEFORE THE APPROVAL. THE NOTICE
17 MUST INCLUDE THE NAME AND ADDRESS OF THE PRIME LESSEE, THE LOCATION AND
18 PROPOSED USE OF THE GOVERNMENT PROPERTY IMPROVEMENT AND THE REMAINING TERM OF
19 THE LEASE OR DEVELOPMENT AGREEMENT.

20 (b) THE GOVERNMENT LESSOR DETERMINES THAT, WITHIN THE REMAINING TERM
21 OF THE LEASE OR DEVELOPMENT AGREEMENT, THE ECONOMIC AND FISCAL BENEFIT TO
22 THIS STATE AND THE COUNTY, CITY OR TOWN IN WHICH THE GOVERNMENT PROPERTY
23 IMPROVEMENT IS LOCATED WILL EXCEED THE BENEFITS RECEIVED BY THE PRIME LESSEE
24 AS A RESULT OF THE CHANGE IN THE LEASE OR DEVELOPMENT AGREEMENT ON THE BASIS
25 OF AN ESTIMATE OF THOSE BENEFITS PREPARED BY AN INDEPENDENT THIRD PARTY IN A
26 MANNER AND METHOD ACCEPTABLE TO THE GOVERNING BODY OF THE GOVERNMENT
27 LESSOR. THE ESTIMATE MUST BE PROVIDED TO THE GOVERNMENT LESSOR AND THE
28 GOVERNING BODIES OF THE COUNTY AND ANY CITY, TOWN AND SCHOOL DISTRICT IN
29 WHICH THE GOVERNMENT PROPERTY IMPROVEMENT IS LOCATED AT LEAST THIRTY DAYS
30 BEFORE THE VOTE OF THE GOVERNING BODY. A CHANGE IN USE UNDER A LEASE OR
31 DEVELOPMENT AGREEMENT BETWEEN A PRIME LESSEE AND A GOVERNMENT LESSOR TO
32 RESIDENTIAL RENTAL HOUSING IS EXEMPT FROM THE ECONOMIC ESTIMATE ANALYSIS
33 REQUIREMENTS OF THIS SUBDIVISION.

34 D. SUBSECTION C DOES NOT APPLY IF:

35 1. THE TAX IS NOT ABATED UNDER THIS SECTION.

36 2. THE GOVERNMENT LESSOR IS ACTING AS A COMMERCIAL LANDLORD WITHOUT A
37 DEVELOPMENT AGREEMENT IN A LEASE FOR A USE ANCILLARY TO A GOVERNMENT PROPERTY
38 IMPROVEMENT USED FOR A PUBLIC PURPOSE.

39 Sec. 8. Section 42-6210, Arizona Revised Statutes, is amended to read:

40 42-6210. Park property lease excise tax

41 A. A county shall levy and collect an annual excise tax on each prime
42 lessee of a lease with the national park service of the United States
43 department of the interior of a property improvement located in the county.

1 B. The tax prescribed by this section shall be assessed, collected and
2 distributed in the same manner as prescribed in this article for the
3 government property lease excise tax, except that:

4 1. Section 42-6206 does not apply to a lease with the national park
5 service.

6 2. The tax rate shall not be less than twenty per cent of the tax rate
7 prescribed in section 42-6203, subsection A OR B, AS APPLICABLE.

8 Sec. 9. Existing government property leases; recording and
9 compiling data; definitions

10 A. By December 31, 2010, each government lessor shall for each lease
11 of a government property improvement in effect on the effective date of this
12 act:

13 1. Record a memorandum of lease in the office of the county recorder
14 in the county in which the government property improvement is located. The
15 memorandum of lease must include the basic lease terms, including the names
16 of the parties, the leased property, the lease term, including the beginning
17 and ending dates, and any options to renew the lease or to purchase any of
18 the government property improvement or government owned land.

19 2. Submit copies of the lease or memorandum of lease to the treasurer
20 of the county in which the government property improvement is located and to
21 the department of revenue.

22 B. For the purposes of this section, "government lessor" and
23 "government property improvement" have the same meanings prescribed in
24 section 42-6201, Arizona Revised Statutes.

25 Sec. 10. Special audit; government property lease excise tax

26 A. In 2015 the auditor general shall conduct and complete a special
27 audit, as defined in section 41-1278, Arizona Revised Statutes, of title 42,
28 chapter 6, article 5, Arizona Revised Statutes, to determine whether the
29 government property lease excise tax, as modified by this act, achieves the
30 goal of providing, in lieu of an ad valorem property tax on possessory
31 interests, a viable revenue stream for counties, cities, towns, school
32 districts and community college districts in which government property
33 improvements are leased for private commercial, residential rental and
34 industrial purposes. The audit shall include consideration of:

35 1. Accountability for government property leases subject to the tax.

36 2. Compliance by government property lessors and prime lessees.

37 3. Efficiencies in collecting the tax and distributing tax revenues
38 and the use of tax revenues by counties, municipalities, community college
39 districts and school districts.

40 4. The statutory rates of tax in producing the expected revenues.

41 5. The tax revenue previously being received from the vacant or
42 underutilized property being redeveloped.

43 6. The tax revenue generated from new economic activity conducted in
44 government property improvements compared with the loss of ad valorem
45 property tax revenues from tax-exempt government property improvements.

1 7. The success of tax abatement under section 42-6209, Arizona Revised
2 Statutes, as amended by this act, in promoting redevelopment in slum and
3 blighted areas.

4 8. Issues relating to government property improvements that are exempt
5 from the tax.

6 9. Any other issues relating to abuse or noncompliance with the
7 requirements of the law.

8 10. Other recommendations for achieving the goals described in this
9 subsection.

10 B. County treasurers and the department of revenue shall cooperate
11 with and assist the auditor general in compiling data and other information
12 necessary for the purposes of the audit.

13 C. The auditor general shall provide copies of the audit report to:

14 1. The governor, the president of the senate and the speaker of the
15 house of representatives.

16 2. The chairpersons of the house of representatives ways and means
17 committee and the senate finance committee.

18 3. The secretary of state.

19 4. Any other person who requests a copy of the report.

20 D. After the completion of the audit, each county treasurer shall pay
21 the cost of the audit prescribed in this section before making any
22 distribution as provided in section 42-6205, subsection B, Arizona Revised
23 Statutes. Each county treasurer shall pay the amount billed to each county
24 by the auditor general within thirty days of the billing date. In the event
25 monthly tax collections are less than the amount billed, the county treasurer
26 shall continue in the succeeding months to first pay the balance due the
27 auditor general before making any other distribution until the bill is paid
28 in full.

29 Sec. 11. Review of government property lease excise tax rates

30 A. By December 15, 2016, the joint legislative budget committee shall
31 conduct an analysis to determine the effectiveness of the government property
32 lease excise tax rates prescribed by section 42-6203, Arizona Revised
33 Statutes, as amended by this act. The analysis shall include consideration
34 of:

35 1. The total ad valorem property tax revenues that would be produced
36 by the properties to counties, cities and towns, community college districts
37 and school districts if the properties were taxable.

38 2. The actual total annual amount of government property lease excise
39 taxes collected and the amounts distributed to counties, cities and towns,
40 community college districts and school districts.

41 3. The tax revenue previously being received from the vacant or
42 underutilized property being redeveloped.

43 4. Determine the average aggregate ad valorem property tax levy per
44 square foot for the various property types listed in section 42-6203, Arizona
45 Revised Statutes, as amended by this act, and compare that levy with the levy

1 rates prescribed by section 42-6203, subsection B, Arizona Revised Statutes,
2 as amended by this act.

3 B. The department of revenue shall cooperate with the joint
4 legislative budget committee for the purposes of this section and, by October
5 1, 2015, provide the joint legislative budget committee with the public
6 database of all government property leases maintained pursuant to section
7 42-6202, Arizona Revised Statutes, as amended by this act.

8 C. The joint legislative budget committee shall submit copies of its
9 analysis pursuant to this section to:

10 1. The governor, the president of the senate and the speaker of the
11 house of representatives.

12 2. The chairpersons of the house of representatives ways and means
13 committee and the senate finance committee.

14 3. The secretary of state.

15 4. Any other person who requests a copy of the analysis.

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.